

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SANDER SABA,

*Plaintiff,*

v.

ANDREW CUOMO, in his official  
capacity as Governor of the State of New  
York, *et al.*,

*Defendants.*

No. 20 Civ. 5859 (LJL)

DECLARATION OF ANDREW AMER  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS

I, ANDREW AMER, an attorney duly admitted to practice law in this Court, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is correct:

1. I am Special Litigation Counsel in the Office of LETITIA JAMES, Attorney General of the State of New York, attorney for Defendants. The information set forth below is based on my personal knowledge. I submit this declaration in support of Defendants' motion to dismiss Plaintiff's complaint.

2. During the period August to October 2020, I participated in a number of settlement discussions with Plaintiff's counsel in an effort to resolve this case on a consensual basis. It was my understanding that those discussions were being conducted pursuant the protections afforded to settlement negotiations under Federal Rule of Evidence 408 based on the parties' prior agreement.

3. In Defendants' opening submission on this motion, Defendants did not disclose any of the substance of the parties' settlement negotiations.

4. On October 22, 2020, I communicated with Plaintiff's counsel via email to advise that Defendants could not agree to enter into a stipulation of settlement based on the terms offered by Plaintiff, and therefore the settlement negotiations had reached an impasse. I further

advised that despite the impasse, the New York State Department of Motor Vehicles (“DMV”) was nevertheless prepared to issue a license to Plaintiff with an “X” gender identification marker immediately through a manual process. This invitation for Plaintiff to apply for and receive an “X” gender license was not part of the settlement negotiations, which had ended, but was a confirmation of DMV’s position to allow Plaintiff to apply for and receive an “X” gender license in the absence of a settlement.

5. A true and correct copy of my October 22, 2020 email is attached as Exhibit A, redacted to protect certain settlement terms from disclosure.

Dated: New York, New York  
December 16, 2020.

/s/ Andrew Amer  
ANDREW AMER